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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9 IN RE: Bard IVC Filters Products Liability
10 Litigation,

No. 2:15-MD-02641-DGC

11 **SECOND AMENDED CASE**
12 **MANAGEMENT ORDER NO. 4**

13 (Master Complaint, Master
14 Responsive Pleading, Use of Short
15 Form Complaint, Waiver of Service
16 for Bard Defendants, and Answer and
17 General Denial in Cases Subsequently
18 Transferred to MDL 2641)

16 The parties previously submitted a Master Long Form Complaint and Jury Demand
17 (previously docketed as Doc. 303-1) and a Master Responsive Pleading (previously
18 docketed as Doc. 303-3). The Court has reviewed these proposed pleadings, finds them
19 sufficient, and directs the Clerk to file them as separate documents in the Court's docket.¹
20 The parties have also submitted a proposed Second Amended Short Form Complaint, a
21 copy of which is attached to this order. The Court also finds this proposed pleading to be
22 sufficient.

23 **IT IS ORDERED:**

24 All allegations pled in the Master Complaint and all responses pled in the Master
25 Responsive Pleading are deemed pled in any previously filed Complaint and Responsive
26 Pleading in this MDL proceeding, except as expressly noted below. They are also deemed
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28 ¹ The reference to "Federal Rule of Evidence 8" on the first page of the Master
Complaint shall be deemed to be a reference to Federal Rule of Civil Procedure 8.

pled in any Short Form Complaint (attached to CMO No. 4, Doc. 363) or Second Amended Short Form Complaint (attached to this Order) and Entry of Appearance filed after the entry of this order, except that the Master Complaint applies only against the Defendant or Defendants identified in such future-filed Short Form or Second Amended Short Form Complaints.

The following cases will not be governed by the Master Complaint and Master Responsive Pleading, but will continue to be governed by the complaints (including any amended complaints) and answers filed in the various transferor courts prior to transfer:

Plaintiff	Original Jurisdiction
1. Cason, Pamela	GA – N.D. Ga. 1:12-cv-1288
2. Coker, Jennifer	GA – N.D. Ga. 1:13-cv-515
3. Conn, Charles	TX – S.D. Tex. 4:14-cv-298
4. Ebert, Melissa	PA – E.D. Pa. 5:12-cv-1253
5. Fox, Susan	TX – N.D. Tex. 3:14-cv-133
6. Henley, Angela	WI – E.D. Wis. 2:14-cv-59
7. Keen, Harry	PA – E.D. Pa. 5:13-cv-5361
8. Milton, Gary	GA – M.D. Ga. 5:14-cv-351
9. Mintz, Jessica	NY – E.D.N.Y. 2:14-v-4942

Plaintiff	Original Jurisdiction
10. Ocasio, Denise	FL – M.D. Fla. 8:13-cv-1962
11. Rivera (McClarty), Vicki	MI – E.D. Mich. 4:14-cv-13627
12. Smith, Erin	TX – E.D. Tex. 1:13-cv-633
13. Tillman, Lessie	FL – M.D. Fla. 3:13-cv-222

On or after **December 28, 2015**, any plaintiff whose case would be subject to transfer to MDL 2641 may file his or her case directly in this Court by using the Short Form Complaint (Doc. 363). After **April __, 2016**, Plaintiffs may use the use the Second Amended Short Form Complaint attached to this Order. If such a case is filed in this Court without the use of the Second Amended Short Form Complaint, Plaintiffs' Co-Lead Counsel shall promptly advise the filing party to file an amended complaint using the Second Amended Short Form Complaint. If the filing party fails to do so, Plaintiffs' Co-Lead Counsel shall promptly notify the Court.

Defendants are not required to file answers to Short Form, Amended Short Form, or Second Amended Short Form Complaints. An Entry of Appearance shall constitute a denial of all allegations in the Short Form, Amended Short Form, or Second Amended Short Form Complaints except as herein provided, and an assertion of all defenses included in the Master Responsive Pleading. By filing an Entry of Appearance in response to a Short Form, Amended Short Form, or Second Amended Short Form Complaints, in lieu of an answer, Defendants do not waive any defenses, including jurisdictional and service defenses.

Defendants shall have 60 days from the entry of this order to file any motion for failure of the Master Complaint to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) and 12(h)(2), and Plaintiff's shall have 30 days to respond.

1 Civil actions in this MDL were transferred to this Court by the Judicial Panel on
2 Multidistrict Litigation for coordinated or consolidated pretrial proceedings pursuant to 28
3 U.S.C. § 1407. Upon completion of the pretrial proceedings related to a civil action as
4 determined by this Court, the case shall be transferred pursuant to 28 U.S.C. § 1404(a) or
5 § 1406(a) to the District Court identified in the Short Form, Amended Short Form, or
6 Second Amended Short Form Complaints, provided the parties choose not to waive
7 *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). The fact
8 that a case was filed directly in this District and MDL proceeding shall not constitute a
9 determination by this Court that jurisdiction or venue are proper in this District, and shall
10 not result in this Court being deemed the “transferor court” for purposes of this MDL. In
11 addition, filing a Short Form, Amended Short Form, or Second Amended Short Form
12 Complaint in this District shall have no impact on the conflict of law rules to be applied to
13 the case. Instead, the law of the jurisdiction where the case is ultimately transferred will
14 govern any conflict of law. Prior to transfer, Defendants may object to the district
15 specified in the Short Form, Amended Short Form, or Second Amended Short Form
16 Complaint, based on venue or jurisdiction (including a lack of personal jurisdiction based
17 on *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014)), and propose an alternative jurisdiction
18 for the Court’s consideration.

19 Subject to the conditions set forth in this order, Defendant C.R. Bard, Inc. and Bard
20 Peripheral Vascular, Inc. (collectively “Bard”) waive service of process in cases filed in
21 this Court using the Short Form, Amended Short Form, or Second Amended Short Form
22 Complaint and in which they are named as defendants and one or more IVC filter
23 products either manufactured or distributed by Bard is alleged to be at issue. For such
24 cases, Plaintiffs shall send a Short Form, Amended Short Form, or Second Amended
25 Short Form Complaint and a request for waiver of service pursuant to the provisions of
26 Fed. R. Civ. P. 4 to Richard B. North, Jr. by email to richard.north@nelsonmullins.com;
27 maria.turner@nelsonmullins.com; and matthew.lerner@nelsonmullins.com. Counsel for
28 Bard shall return the signed waiver requests to the Court within the time permitted by Fed.

1 R. Civ. P. 4. Plaintiffs submitting a request for waiver shall not seek to hold Bard in
2 default for failure to timely answer or otherwise respond to a complaint in which service
3 has been accomplished pursuant to the terms of this order without first giving Bard written
4 notice of the alleged default and ten business days in which to cure any alleged default.

5 Prior to a Plaintiff's attorney filing a Short Form, Amended Short Form, or Second
6 Amended Short Form Complaint in this Court, that attorney must register for or already
7 have a District of Arizona CM/ECF log-in name and password. If the Plaintiff's attorney
8 does not already have a District of Arizona CM/ECF log-in name and password, that
9 attorney **must** file the Short Form, Amended Short Form, or Second Amended Short Form
10 Complaint in paper form with the Clerk of Court and simultaneously file an Application
11 of Attorney for Admission to Practice Pro Hac Vice pursuant to LRCiv 83.1(b)(2)
12 (including all necessary attachments and filing fee).

13 Additionally, with respect to cases which are originally filed in courts other than
14 this Court which are then subsequently transferred to MDL 2641 pursuant to 28 U.S.C. §
15 1407, Defendants' may file an Answer and General Denial with Respect to Cases
16 Subsequently Transferred to MDL 2641, incorporating the defenses and denials set forth
17 in the Master Answer and generally denying the plaintiffs' allegations. This short-form
18 answer shall serve as the responsive pleading. Defendants shall have 60 days from the
19 date any such case is opened in this Court to file any motion for failure to state a claim
20 upon which relief may be granted pursuant to Rule 12(b)(6) and 12(h)(2), and the
21 plaintiff(s) shall have 30 days to respond.

22 Dated this ____ day of _____, 2016.
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